IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL REVISION APPLICATION NO. 484 OF 2007

IN

APPEAL NO. 52 OF 2005

AND

CROSS OBJECTION NO. 5 OF 2005

IN

RAE SUIT NO. 1052/3201 OF 1986

Neville Navroj Italia & Ors. ... Applicants
(Org. Defendants)

Versus

Ms. Bearice Maureen Clifford & Ors. Respondents
(Org. Plaintiffs)

Mr. V.A.Thorat, Senior Counsel a/w Mr. R.A.Thorat, Advocate for the applicants.

Mr. Y.S.Jahagirdar, Senior Counsel, a/w Mr. D.A.Joseph, advocate, i/b. M/s. David & Associates, Advocates for respondents Nos. 1 to 3.

CORAM: J.H.BHATIA,J.

DATE: 10th December,2007.

P.C.

1. After arguments at some length, the learned Counsel for both the parties concede that Appeal No.52/2005 filed by the respondents was allowed on the basis of certain documents filed before the appellate Court to show that respondents Nos. 2 and 3, who are the original plaintiffs, now intend to settle in India and they bonafide require the suit premises for their own occupation. However, on that point, neither any amendment was made in the plaint nor any oral evidence was led nor the defendants/present applicants were given an opportunity to cross-examine the concerned witnesses to find out the genuineness of the claim. Therefore, the learned Counsel for both the parties agree that the impugned judgment in Appeal No.52 of 2005 may be set aside and the Appeal may be remanded back to the appellate Court with a direction to give an opportunity to the plaintiffs/appellants therein to lead necessary evidence in support of their contention that the plaintiffs/appellanmts Nos. 2 and 3 intend to take citizenship of India and to settle in Mumbai and also to give an opportunity to the present applicants, who are the original defendants to cross-examine them and also to lead any additional evidence if they feel it necessary restricting to that point only.

2. In view of the above, the Revision Application is allowed and the impugned judgment in Appeal No.52 of

2005 is hereby set aside. The Appeal is remanded back to the appellate Court for hearing and disposal of the Appeal afresh after giving an opportunity to the plaintiffs/appellants to lead additional evidence, if any, in respect of their contention that appellants Nos. 2 and 3 intend to settle in Mumbai and they bonafide require the suit premises for their own occupation. The defendants shall also be given an opportunity to cross-examine witnesses and if they deem it necessary, they may also be permitted to lead evidence restricted to this aspect of the matter only. After recording the evidence of the parties in this respect, the learned appellate Court shall hear the parties and decide the Appeal on its own merits. The appellate Court shall expedite the hearing of the Appeal and shall dispose of the same as early as possible and preferably by the end of March, 2008.

3. In Civil Writ Petition No.1560 of 2007, by order dated 13th April, 2007, this Court has passed certain directions against invocation of clauses 8 and 9 of the Constituted Attorney till the Appeal No.52 of 2005 is heard and decided and two weeks thereafter. The said order shall continue to be in force.

(J.H.BHATIA,J.)